IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2810 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADODARA MUNICIPAL CORPN

Versus

DEVJIBHAI JAGABHAI SOLANKI C/O GUJARAT MAZDOOR SENA

Appearance:

MR PRANAV G DESAI for Petitioner No. 1

MR RD RAVAL for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/08/2001

ORAL JUDGEMENT

1. Rule. Mr.Raval waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is heard finally today.

2. The petitioner-Corporation has challenged the Award passed by the Labour Court, Vadodara dated 13.12.1999, passed in Reference (L.C.V.) No.30 of 1989. The respondent-workman was serving since 1970 as a Sweeper on permanent basis. He was removed from services by an order dated 21.9.1987. Since the respondent was on unauthorised absence, after ex parte enquiry, he was removed from service. The aforesaid removal order was challenged by the concerned workman.

3. The Labour Court came to the conclusion that the departmental enquiry was held properly and that there was no infirmity in the said enquiry proceedings. However, the Labour Court exercised powers in the nature of Section 11-A of the Industrial Disputes Act and passed an order of reinstatement without back wages and by inflicting penalty of withholding of one increment with future effect.

4. It was argued by Mr.Desai for the petitioner that the respondent remained unauthorisedly absent without submitting any leave report and that, therefore, the Corporation was justified in removing him from service. Mr.Raval, on the other hand, has argued that the respondent was not keeping good health and, therefore, he remained absent for the aforesaid period. He submitted that the respondent had continuously put in 14 years of service before his removal and that, in the past, at no point of time, he was found to have been negligent in service or he had not remained unauthorisedly absent and his past record is also good.

Considering the arguments of both the sides, I am of the opinion that this is not a case in which maximum penalty of removal is required to be passed. However, it is required to be noted that the respondent remained absent without leave practically for a period of about three years and, therefore, penalty of withholding of one increment with future effect will not be sufficient penalty. In the facts and circumstances of the case, therefore, while confirming the order of reinstatement, I modify the order of the Labour Court and instead of withholding of one increment, the concerned workman will now be subjected to penalty of withholding of two increments with future effect. It is required to be noted that the respondent workman will not be entitled to any back wages for the intervening period. However, his services will be treated to be continued for notional benefits and for other benefits except for payment of back wages. The Corporation may reinstate the respondent

within a period of one month from today and, after reinstating him in service, from the said date, the respondent will be entitled to his regular salary and he will not be entitled to his salary or back wages from the date of the Award, but he will be entitled to regular salary from the date on which he is reinstated in service, which may be done by the Corporation within a period of one month from today. The Corporation may also pass appropriate order of notionally fixing his salary and other benefits within a period of one month from today.

5. The petition is accordingly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

24th August, 2001 (P.B. Majmudar, J.)

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(apj)